

## **CIVIL SERVICE COMMISSION MINUTES**

**February 5, 2003**

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman  
Sigrid Pate  
Mary Gwen Brummitt  
Marc Sandstrom

Comprising a quorum of the Commission

Absent was:

Gordon Austin

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
February 5, 2003

2:00 p.m.      CLOSED SESSION:    Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 310, 1600 Pacific Highway,  
San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
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COMMENTS Motion by Pate to approve all items not held for discussion; seconded by Brummitt. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A.    Commissioner Brummitt: Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, former Human Resources Analyst, appealing a Final Order of Removal and Charges from the Department of Human Resources.

**REGULAR AGENDA**  
**County Administration Center, Room 310**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

**MINUTES**

1.    Approval of the Minutes of the regular meeting of January 15, 2003.

**Commissioner Newman requested that the January 15, 2003 Minutes reflect his desire to be recused from items 9 and 13. Minutes approved.**

**CONFIRMATION OF ASSIGNMENTS**

2.    Commissioner Newman: **Michele Virgilio**, former Intermediate Clerk Typist, appealing a Notice of Separation for Failure to Return After Leave from the Department of Housing and Community Development.

**Confirmed.**

3.    Commissioner Brummitt: Richard L. Pinckard, Esq., on behalf of **2003/0001\***, Deputy Sheriff, appealing an Order of Pay Step Reduction, Removal of Training Officer Premium and Charges from the Sheriff's Department.

**Confirmed.**

4. Commissioner Pate: Richard L. Pinckard, Esq., on behalf of **2003/0002\***, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Confirmed.**

5. Commissioner Austin: Richard L. Pinckard, Esq., on behalf of **2003/0003\***, Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

**Confirmed.**

#### **WITHDRAWALS**

6. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Gloria Paranada**, former Deputy Probation Officer, appealing an Order of Removal and Charges from the Probation Department.

**Withdrawn.**

7. **Andre Stutz**, prospective candidate for Deputy District Attorney V, appealing the selection process used by DHR and the former District Attorney for the classification of Deputy District Attorney V.

**Withdrawn.**

#### **DISCIPLINES**

##### **Findings**

8. Commissioner Brummitt: Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, former Human Resources Analyst, appealing a Final Order of Removal and Charges from the Department of Human Resources (DHR).

##### **FINDINGS AND RECOMMENDATIONS:**

Employee was charged with Cause I - Inefficiency (absent from assigned duties and work station); Cause II - Dishonesty; Cause III - Conduct unbecoming an employee of the County; Cause IV - Failure of good behavior. Employee was a Human Resources Analyst at the time of her termination. The subject termination pertains to Employee's conduct on July 30, 2002 at the Department's satellite office in Escondido, an assignment which rotated among HR analysts on a daily basis. On that day, Employee arrived timely at approximately 8:00 a.m., however around 9:30 a.m., HHSA staff noticed her missing from the HR office, and grew increasingly concerned regarding Employee's absence. There were customers seeking HR analyst assistance who were imposing on HHSA staff. Her absence was reported to the Department's Downtown office and a replacement analyst was dispatched to the Escondido office to cover for Employee's absence. At approximately 2:30 p.m. Employee returned to the Escondido facility, at which time she was requested to return to the Downtown facility to meet with her supervisor and the Deputy HR Director. Employee alleged that she was present during the time at issue except from 11:30 a.m. to 1:30 p.m. at which time she stated that she went to a "Jiffy Lube" at a specific street location and that she could produce a receipt as proof thereof.

At a second meeting, Employee stated that she went to several oil change businesses but was unable to obtain an oil change and did not, therefore, have a receipt. Employee claimed 8 hours compensation for July 30, 2002, based on working 8:00 a.m. to 6:00 p.m., with a one-hour lunch. At the hearing Employee argued that the level of discipline was

excessive and that it was based on retaliation and/or bias. (Her most recent performance Appraisal Report contained an overall rating of "Needs Improvement", which she appealed. Additionally, the Department provided evidence of several oral counselings relating to being late to work and not being at her desk available to customers. There was a long-standing dispute between the Department and Employee regarding her compensation and promotional opportunities. Also, a discrimination complaint filed against the Department by Employee was dismissed without probable cause.)

Employee alleged that she was present at the Escondido facility attending to her work duties but that she went to an outside table at the facility to rate applications because it was too hot in the office. Given the circumstances, including the fact that staff was looking for her and the size of the small facility, it seems implausible that Employee could be present and yet remain undetected for two morning hours and an hour in the afternoon, thus defending her claim for 8 hours of compensation. Although she did work an extra hour in the evening, it was established that she was absent for more than just two hours. Even if Employee's version of the events were accepted to be true, the Commission would still be left with the fact that she had several previous counselings and comments in her Performance Appraisal Report and still engaged in the very type of conduct which she was counseled against.

The Department proved all of the charges contained in the Order of Removal and Charges. Employee is guilty of Causes I, II and III. It is therefore recommended that the Final Order of Removal and Charges be affirmed; that the Commission read and file this Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations;  
seconded by Pate. Carried.**

## **DISCRIMINATION**

### **Complaints**

9. **Kimberly Brown**, Candidate for Deputy District Attorney IV, alleging political affiliation discrimination by the former District Attorney.

RECOMMENDATION: Assign Commissioner Sandstrom as the Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Sandstrom appointed.**

### **Findings**

10. Commissioner Sandstrom: **Pazleona M. Espejo**, Personnel Aide, Health and Human Services Agency, alleging age, ethnicity and non-job-related factor (favoritism) discrimination by the Department of Parks & Recreation.

### **FINDINGS AND RECOMMENDATIONS:**

At the special meeting of the Civil Service Commission on August 29, 2002, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was evidence to support

Employee's allegations of age, Ethnicity, and Non-Job-Related Factor (favoritism) discrimination and that probable cause that a violation of discrimination laws occurred was established in this matter. It is therefore recommended that this complaint be assigned to a hearing officer to conduct a Rule VI hearing; and that the Commission approve and file this report with a findings that there is probable cause that Complainant has been discriminated against on bases protected by law; and that the Commission read and file this report.

**Motion by Sandstrom to approve Findings and Recommendations; seconded by Pate. Carried. Commissioner Sandstrom appointed as the hearing officer.**

11. Commissioner Austin: **Jo Pastore**, Deputy Public Defender III, alleging retaliation discrimination by the Department of the Public Defender. (See No. 12 below.)

**Note: Item No. 12 was discussed prior to these Findings being read.**

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on October 16, 2002, the Commission appointed Gordon Austin to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was evidence to support Employee's allegations of retaliation discrimination and that probable cause that a violation of discrimination laws occurred was established in this matter. It is therefore recommended that this complaint be assigned to a hearing officer to conduct a Rule VI hearing; and that the Commission approve and file this report with a findings that there is probable cause that Complainant has been discriminated against on bases protected by law; and that the Commission read and file this report.

**Motion by Pate to approve Findings and Recommendations; seconded by Sandstrom. Carried. Commissioner Austin appointed as the hearing officer.**

#### SELECTION PROCESS

##### Complaints

12. **Jo Pastore**, Deputy Public Defender III, appealing her non-selection for the classification of Deputy Public Defender IV by the Department of the Public Defender. (See No. 11 above.)

RECOMMENDATION: Take action pending outcome of the discrimination complaint.

Heidi Atwood representing the Department requested to speak to Items 11 and 12 herein. Regarding Rule X, Ms. Atwood stated that Appellant's appeal was untimely by 14 days. As for Rule VI, she contends there was no discriminatory action on the part of the Department.

Ms. Pastore agreed that her Rule X Selection Process appeal was untimely, however she requested that her appeal not be denied due to technicality. Mr. Cook acknowledged the lateness, but explained that the Rule VI and Rule X are so closely related and intertwined that he recommended both issues be heard simultaneously, supporting his recommendation with the Velez court decision. Commissioner Newman, although supporting the Commission's decision to waive the lateness

issue due to the Rule VI investigation, noted that he takes great stock in the timelines outlined in the Civil Service Rules, and therefore abstained from the vote.

**Motion by Sandstrom to waive lateness of Rule X filing; seconded by Pate. Carried. Commissioner Austin Assigned as the hearing officer.**

<b>AYES:</b>	<b>Pate, Brummitt, Sandstrom</b>
<b>NOES:</b>	<b>None</b>
<b>ABSTENTIONS:</b>	<b>Newman</b>
<b>ABSENT:</b>	<b>Austin</b>

#### **OTHER MATTERS**

##### **Seal Performance Appraisal**

13. Wendell Prude, S.E.I.U. Local 2028, on behalf of **Lane M. Healey**, Correctional Counselor, Sheriff's Department, requesting the sealing of a Performance Appraisal for the period April 25, 2001 to April 25, 2002. (Continued from the Commission's January 15, 2003 meeting.)

**RECOMMENDATION:** Consider all written and verbal input.

Tom Reed representing the Sheriff's Department addressed the Commission and explained that the above-dated Performance Appraisal was appealed by Ms. Healey approximately 6 months ago. He admitted that the Department was 10 days late in issuing the initial Appraisal, however he believes that Ms. Healey's request to seal is the result of content rather than procedure.

Wendell Prude, SEIU Local 2028, on behalf of Appellant expressed that the negative remarks in the Performance Appraisal were due to an alleged retaliation by a supervisor (sexual harassment complaint by Appellant), and that documents were never received by Appellant supporting the adverse comments. Further, Mr. Prude explained, the Department has not provided any documents to date to Appellant or to the Union, as requested. Mr. Prude emphasized that the Union does not normally represent an appellant who wishes to seal an evaluation that contained a rating of overall "standard", however, in this matter, the Union believes that Ms. Healey was given this Appraisal with ulterior motives.

Comments from Ralph Shadwell, Sr. Deputy County Counsel, and Larry Cook, Executive Officer, concurred that perhaps a Rule VI discrimination complaint could have been filed by Appellant in addition or in lieu of the Rule V, however the time to file a Rule VI has been exhausted.

Commissioners queried Mr. Cook regarding historical reference points of past sealings, and remedy. Commissioner Newman maintained that most performance appraisals should not be sealed due to timeliness because a sealing leaves a "hole" in the performance history of an employee. He further maintained that in the case of an untimely issuance, a supervisor should be disciplined because that is where the error occurred.

The Commission found that although untimely, the delay did not justify the sealing of this appeal.

**Motion by Sandstrom to deny sealing; seconded by Pate. Carried.**

### **Extension of Temporary Appointments**

- 14. Agriculture, Weights & Measures
  - 2 Insect Detection Specialists I (Diana Lara, Emily Novak)
- 15. Department of Child Support Services
  - 3 Imaging Technician Trainees (Gina Ortojan, Maripaz Pinpin, Dulce Diego)
- 16. Health and Human Services Agency
  - A. 1 Residential Care Worker Trainee (Monica Arreola)
  - B. 1 Medical Records Technician (Elida Gil)
- 17. Department of Planning and Land Use
  - 1 Land Use Technician I (Dahlia Fakhrriddine)

RECOMMENDATION: Ratify Item Nos. 14 - 17.

**Item Nos. 14-17 ratified.**

- 18. Public Input.

\* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).

ADJOURNMENT: 4:00 P.M.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MARCH 5, 2003**